



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Joseph Sandler, Esq.  
Stephen Hershkowitz, Esq.  
Sandler, Reiff & Young, PC  
300 M Street, SE, Suite 1102  
Washington, DC 20003

**DEC 19 2014**

RE: MUR 6275  
Massa for Congress, Beverly Massa in her  
official capacity as treasurer  
Eric Massa

Dear Messrs. Sandler and Hershkowitz:

On January 6, 2011, you were notified that the Federal Election Commission (the "Commission") found reason to believe that Massa for Congress and Beverly Massa in her official capacity as treasurer (the "Committee") violated 2 U.S.C. § 434(b) by failing to report debts and obligations in connection with the Committee's \$40,000 payment to Joseph Racalto. You were also notified that the Commission was equally divided on whether to find reason to believe concerning a violation of 2 U.S.C. § 439a(b) in connection with the Committee's \$31,896.42 payment to GMAC. On February 22, 2011, you submitted a response to the Commission's reason to believe finding. After considering the circumstances of the matter, the Commission determined on December 8, 2014, to take no further action as to the Committee concerning the alleged violation of 52 U.S.C. § 30104 (formerly 2 U.S.C. § 434(b)), and closed the file in this matter. The Commission also dismissed the allegation that the Committee or Eric Massa violated 52 U.S.C. § 30114(b) (formerly 2 U.S.C. § 439a(b)) in connection with the \$40,000 payment to Joseph Racalto. The Factual and Legal Analysis, which more fully explains the basis for the Commission's decision, is enclosed. In addition, a Statement of Reasons further explaining the basis for the Commission's decision concerning the payment to GMAC will follow.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

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Joseph Sandler, Esq.  
MUR 6275 (Massa for Congress)  
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If you have any questions, please contact me at (202) 694-1650.

Sincerely,



Ana Peña-Wallace  
Attorney

Enclosure  
Factual and Legal Analysis

ENCLOSURE

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**FEDERAL ELECTION COMMISSION**

**RESPONDENTS:** Eric Massa **MUR 6275**  
Massa for Congress and  
Beverly Massa, in her official capacity as treasurer

**FACTUAL AND LEGAL ANALYSIS**

This matter was generated by a Complaint filed with the Federal Election Commission (the "Commission") alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act").<sup>1</sup> The Complaint alleges that former Congressman Eric Massa and his campaign committee, Massa for Congress (the "Committee"), violated the Act in connection with a \$40,000 payment from the Committee to Joseph Racialto, Massa's Congressional Chief of Staff, on March 4, 2010, for a "campaign management fee." Because that payment may have related to an unreported deferred compensation arrangement, the Commission found reason to believe that the Committee violated 52 U.S.C. § 30104 (formerly 2 U.S.C. § 434(b)) by failing to report debts and obligations.<sup>2</sup> The Complaint also asserted that Racialto either may not have performed sufficient work to justify the amount of the payment or had "obtained [the payment] through deceit," in which case the Committee or Massa may have converted campaign funds to personal use in violation of 52 U.S.C. § 30114 (formerly 2 U.S.C. § 439a).<sup>3</sup>

**A. Reporting Debt or Obligation**

The evidence obtained by the Commission indicates that Racialto conducted work on

<sup>1</sup> See 52 U.S.C. § 30109(a)(1) (formerly 2 U.S.C. § 437g(a)(1)). On September 1, 2014, the Act was transferred from Title 2 to new Title 52 of the United States Code.

<sup>2</sup> See Certification, MUR 6275 (Dec. 28, 2010); Factual & Legal Analysis, MUR 6275 (Massa for Congress).

<sup>3</sup> Compl. at 7.

1   behalf of the Committee related to campaign activities for which he was entitled to some  
2   compensation, and the parties agree as to that much.<sup>4</sup> Whether the value of that work to the  
3   Committee reasonably supports the \$40,000 amount of the payment, however, is sharply  
4   disputed and not readily ascertainable from the available evidence. There was no written  
5   deferred compensation plan between Rcalto and the Committee for his campaign work. And  
6   whether an oral agreement existed is a point of conflict among the parties, although the evidence  
7   reflects that they discussed at least the possibility of compensation shortly before Rcalto sought  
8   payment.

9           Thus, because the available information does not indicate that the Committee agreed to  
10   pay Rcalto before March 2010, there is no basis to conclude that the Committee had incurred a  
11   debt that it may have been required to disclose before it received the demand for payment.  
12   Moreover, because it appears that Rcalto performed much of the work that would have been the  
13   subject of the Committee's payment during the same reporting period in which he made his  
14   demand and the Committee issued that payment, no reportable debt would have been incurred as  
15   to that work. Furthermore, even if the payment were characterized not as compensation but as  
16   severance — similar to the payments several campaign staffers received at the same time — such  
17   a payment would not constitute a debt that should have been reported in an earlier disclosure  
18   report. Therefore, the Commission takes no further action with regard to the Committee's  
19   alleged violation of 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)).

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<sup>4</sup>       The amount the Committee should pay to Rcalto is currently the subject of a pending civil suit between the parties. *See Massa for Congress v. Joseph Rcalto*, No. 11-1690CV (N.Y. Sup. Ct. Mar. 4, 2011) (complaint originally filed in Monroe County on Mar. 4, 2011, but venue changed to Steuben County on Nov. 28, 2011).

1           **B.       Personal Use**

2           The Complaint asserted that the Committee's \$40,000 payment to Racalto constituted  
3 impermissible personal use of campaign funds — either because it was excessive or obtained  
4 through false pretenses. Committees and candidates have latitude to retain services and  
5 compensate staff within commercially reasonable bounds, and the available evidence suggests  
6 that at least some portion of the payment was legitimate compensation for Racalto's work on the  
7 campaign. Additional Commission action relating to the value of Racalto's services would be  
8 wasteful and unwarranted, however, particularly because the issue is currently being litigated by  
9 the parties. Accordingly, the Commission dismisses the allegation that the Committee or Rep.  
10 Massa violated 52 U.S.C. § 30114(b) (formerly 2 U.S.C. § 439a(b)), and closes the file.<sup>5</sup>

<sup>5</sup>       *See Heckler v. Cheney*, 470 U.S. 821 (1985); Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,546 (Mar. 16, 2007) (recognizing that dismissal may be warranted due to factors such as the "vagueness or weakness of the evidence").